



City of Broken Arrow
Minutes
Planning Commission

City of Broken Arrow
Council Chambers
220 S 1st Street
Broken Arrow OK
74012

Chairperson Fred Dorrell
Vice Chair Lee Whelpley
Member Ricky Jones
Member Carlyne Isbell-Carr
Member Mark Jones

Thursday, March 23, 2017

5:00 PM

Council Chambers

1. Call To Order

The meeting was called to order at 5:01 p.m. by Chairman, Fred Dorrell.

2. Roll Call

Present 4 - Mark Jones, Lee Whelpley, Fred Dorrell, and Ricky Jones

Absent 1 - Carlyne Isbell-Carr

3. Old Business

None

4. Consideration of Consent Agenda

The Consent Agenda Items were presented by Staff Planner, Amanda Yamaguchi. Fred Dorrell explained the Consent Agenda process and asked if anyone wished to remove any item from Consent for discussion. No one responded.

A. Approval of Minutes, Planning Commission meeting held February 9, 2017

MOTION: by Ricky Jones to approve Consent Agenda Items A, B, and C, per the Staff report. The motion was seconded by Lee Whelpley.

Aye: 4 - Mark Jones, Lee Whelpley, Fred Dorrell, and Ricky Jones

Absent: 1 - Carlyne Isbell-Carr

B. Approval of Minutes, Planning Commission meeting held March 9, 2017

MOTION: by Ricky Jones to approve Consent Agenda Items A, B, and C, per the Staff report. The motion was seconded by Lee Whelpley.

Aye: 4 - Mark Jones, Lee Whelpley, Fred Dorrell, and Ricky Jones

Absent: 1 - Carolyn Isbell-Carr

- C. Approval of BAL-2014CB, Riddle Property, 0.60 acres, 2 Lots, R-2 (Single Family Residential)/PUD 182, one-half mile south of New Orleans Street, one-half mile east of Mingo Road**

MOTION: by Ricky Jones to approve Consent Agenda Items A, B, and C, per the Staff report. The motion was seconded by Lee Whelpley.

Aye: 4 - Mark Jones, Lee Whelpley, Fred Dorrell, and Ricky Jones

Absent: 1 - Carolyn Isbell-Carr

5. Consideration of Items Removed from Consent Agenda

None

6. Public Hearings

- A. Public hearing, consideration, and possible action regarding PUD-259 and BAZ-1975, Muhich Tract, 71.94 acres, 7 Lots, A-1 to IL/PUD-259, one-half mile east of Evans Road, one-quarter mile south of Kenosha Street**

Plan Development Manager, Larry Curtis presented the background saying, Planned Unit Development (PUD)-259 and BAZ-1975 involve undeveloped and unplatted land located one-half mile east of Evans Road, one-quarter mile south of Kenosha Street. Applicant is proposing to change the zoning on 44.10 acres of this property from A-1 (Agricultural) to IL (Industrial Light) and include the entire 71.94 acres in PUD-259.

Mr. Curtis said BACP-159, a request to change the Comprehensive Plan designation on 50.13 acres from Level 3 to Level 6, was approved by the City Council February 7, 2017. This rezoning request to change the zoning from A-1 to IL is considered to be in conformance with the comprehensive plan when done in conjunction with a PUD. A draft PUD was submitted with BACP-159 for informational purposes. Comments and input, from the City Council and Staff, have been incorporated and formally submitted as PUD-259.

Larry Curtis said, according to the applicant, about halfway between Kenosha Street and the southern boundary of the property associated with PUD-259 and BAZ-1975, is the location of a former landfill, leased by the City of Broken Arrow. In addition, this area was used for strip coal mining operations in the 1920s, 1930s, and later in the 1960s. Environmental impacts to the site and adjacent properties, as a result of the past strip mining operations, include elevated metals concentration in both on and adjacent off-site soils. After mining operations were terminated, the property was utilized as a landfill by the City of Broken Arrow. The landfill was first permitted as a hazardous waste disposal site in February 1973. By June 1973, the landfill permit was converted to a sanitary landfill solid waste disposal site. The landfill was closed on September 15, 1976. According to the applicant, the landfilled area was capped with four to

five feet of clay and silty loam with grass and gravel. The waste material that was deposited is generally five to six feet in thickness and ranges to 11.5 feet in the northwest area of the landfill. This area, as well as the entire site, is regulated by the Department of Environmental Quality (DEQ) and will require approval from DEQ before any development activities occur on the site. These requirements are addressed in PUD-259.

Mr. Curtis said PUD-259 divides the property into seven tracts (Tracts A through G). A cul-de-sac type street is proposed to be constructed in a north/south direction through the center of the property. Tract A, which is located on the southeast corner of Kenosha Street and the proposed street, will be developed in accordance with the development regulations of the CH district except that a 20-foot wide landscape area will be provided along Kenosha Street and freestanding signs will be the same as those on the Tractor Supply property to the west.

Tracts C and F, which are near the center of the property, will be developed in accordance with the development regulations of the IL district except as follows: Approval from DEQ is required prior to any development occurring on the property. Permitted uses are limited to: Mini-Storage, RV Storage, Storage Yard, Office/Warehouse, Warehouse, Utility Facility (Minor), General Industrial Service, and Light Assembly.

Tracts D and E, which are at the south end of the property, along with Tract G, which is located immediately south of Tractor Supply, will be developed in accordance with the development regulations of the IL district except as follows: Permitted uses are limited to: Mini-Storage, RV Storage, Storage Yard, Office/Warehouse, Warehouse, Utility Facility (Minor), General Industrial Service, and Light Assembly. A 30-foot wide landscape buffer will be provided along the south and east boundaries of Tracts D and E. Within this landscape buffer at least one tree per 25 lineal feet will be provided and at least half of the trees will be evergreen.

Larry Curtis continued saying, Tract B, which is the environmentally sensitive parcel next to Kenosha Street, is regulated by DEQ and will require DEQ approval for any development activity on the property. This area will be left in its native state. Fencing and signage requirements have been added to PUD-259, as per City Council comments on the draft PUD submitted with BACP-159.

With PUD-259, the applicant has provided an exhibit titled "Brownfield Program Tract Map". The DEQ Brownfield Program assisted the existing property owner in reviewing the environmental concerns of the subject property. The overall property was divided into four tracts (Tracts 1, 2A, 2, and 3). In 2014, DEQ issued Tracts 1 and 3 a "Certificate of No Action Necessary". Tract 1 is located next to Kenosha Street and Tract 3 is next to the south boundary of BACP 159. The "Certificate of No Action Necessary" for Tracts 1 and 3 also stipulated in the Land Use Restrictions section that: 1) No use of groundwater and no drilling of wells and 2) No residential use of the property. The middle tract (Tract 2) was the subject of an Addendum prepared by Blackshare Environmental Solution on June 15, 2016, declaring that Tract 2 would only be suitable for nonresidential uses based on an environmental review of the site. Tract 2A was designated in the Blackshare report as having "areas of excessive radiation."

In addition to the Blackshare report, the applicant has submitted a radiation survey which was

performed in May 2014 to determine the location of radiation source materials and levels of radiation associated with these locations. Elevated readings were observed in the northeastern corner of the site, which corresponds to Tract 2A of the Blackshare report and Tract B of PUD-259.

As requested by city residents, a meeting with the applicant, city staff, and representatives from Blackshare and DEQ (Department of Environmental Quality) was held on March 7th 2017. Questions and concerns from residents, and the City Council raised during the comprehensive plan change (BACP-159) process were discussed and incorporated into the design of the site and PUD-259. The applicant will speak to these concerns during this meeting, tonight.

The surrounding property, on all four sides, is zoned A-1 and to the south BAZ-1658 and BAZ-1640 were approved for RS-3 zoning, subject to platting. It is the recommendation of Staff, that Level 3 designation that is presently on this property allows a wide variety of residential uses as well as office neighborhood; however, with the environmental issues associated with this property, most of the property is not suitable for residential development. Therefore, the Comprehensive Plan needs to be amended.

The IL zoning being contemplated by the applicant is in accordance with the Comprehensive Plan in Level 6, provided it is done as part of a PUD. Based on the Comprehensive Plan, location of the property, the environment issues associated with the property, and the surrounding land uses, Staff recommends that PUD- 259 and BAZ-1975 be approved to change the zoning on the property to IL and PUD-259, subject to the property being platted.

Larry Curtis, said the applicant and Mr. Blackshare and members of DEQ are present and available to answer questions.

Fred Dorrell asked if the applicant would step forward and state their name and address and if they are in agreement with Staff recommendations.

Tim Terral, Tulsa Engineering and Planning, 9820 E. 41st Street, Ste. 106, Tulsa said they are in agreement with Staff recommendations. He said Derek Blackshare and DEQ are available to discuss any environmental concerns.

Derek Blackshare, Blackshare Environmental Services, 5121 S. Wheeling Ave., Tulsa, 74015 said all the property outlined, including Tractor Supply, shown in red on the drawing provided have been analyzed and applied for DEQ Brownsfield no action certificate. Tract 1 and 3 have been issued their no action certificate. Tract 2 proposal is pending DEQ approval now.

Mr. Blackshare said he was asked to discuss Tract 2A, where radiation concerns exist, as well as Tract 2 some the landfill and what is planned for development in regard to structures or anything that might go on Tract 2. Tract 2 was discovered as a part of the site characterization associate with the Brownsfield investigation on the property. The entire site was surveyed. He referenced a graph provided with the Staff report, stating it's a graphical representation of the entire 76 acres. He said the graph shows dark blue, yellow, red, and northeast corner of the property are where elevated radioactive readings where obtained on the survey. The survey was

created on a grid basis and wherever a line is indicated is where survey points were taken. The survey was very thorough, in its investigation and point out “hot spots”, represented by the darker colors on the graph. Areas indicated with blue and green are no concern areas. The areas indicated as red or yellow may have some concern.

Derek Blackshare said the material is a blue/grey, hard material, similar to concrete that consists of uranium and thorine, both radioactive materials. It is unknown how the material got there - it may have been when the area was open access and the material may have been dumped. The material is not naturally occurring. Half-lives of these material are very long and will not go away anytime soon. When looking at radiological concerns there are several factors: the time of exposure and distance from the source must be referenced as ways to protect oneself. He referenced a colored graph, that was provided within the Staff report, saying the line shown in green indicates the radioactive level received with a dental x-ray. He said if someone were exposed to the highest level obtained on this site for one hour they would receive the equivalent radiation of a dental x-ray. He said level 10 is the background dose received from an average individual, nationwide, and this site is half that. A flight from New York to Los Angeles has radiation exposure of 40. He said the take away from this data is that the levels are low. He said he equates the time exposure to a day of sun exposure.

Time is the first thing that can reduce exposure. This site is proposed to isolate, so this portion is not developed, or occupied. The second is distance. Radiation is inversely squared proportionately to the to distance away from the source. If someone were standing on top of a source that reads 100 rads and they move 5 meters away, the dose that person would receive drops to 4. Moving 10 meters away, the dose received drops to one. Fencing and isolation accomplish two things: time exposed and, distance away from the source. He said all this information pertains to Tract 2A, which puts a sufficient buffer around the radiological concerns observed and found during the survey.

Ricky Jones asked if there is an option to dig up the area and move it somewhere else. Mr. Blackshare said it is; however, the material (as it sits now) is regulated as nuclear regulated material and it would be cost prohibitive measure. Moving it requires licensures and there are only a few places in the country that are available for disposal sites. The issue will be evaluated in the future but for now the area is isolated and being left alone.

Ricky Jones asked if a study were done in his own yard if the area would be indicated in the blue area (on the graph), as normal levels. Derek Blackshare said they are referred to as background levels and generally the levels are 14 to 17 microrems per hours (mrems), as represented in the blue and green colors on the graph.

Lee Whelpley said Tract 2A shows areas of red which appears to be dangerous. Derek Blackshare said it is an elevated level and from level standpoint, one-hour exposure to the red area is equivalent to a dental x-ray; that is the dose that would be received from it.

Mark Jones asked how they plan to protect the areas... with a fence and signs. Mr. Blackshare said the area is to be fenced and isolated so people cannot access other than for access for

mowing.

Mark Jones asked what type of fence will be installed. Mr. Blackshare said it will be a 6-foot opaque fence or wood fence with signage.

Larry Curtis said the signage, per the PUD would warn to stay away from the area.

Derek Blackshare said Tracts 1 and 3 have two restrictions on their No Action Certificate: First is no residential use and the second is no water wells. Tract 2 will have the same restrictions plus two others.

Lee Whelpley asked if it is at the surface or below the surface. Mr. Blackshare said generally the material is buried at a level of 6-12 inches below the surface; the studies showed the bulk at 6-12 inches.

Lee Whelpley asked if the area could be covered to minimize the hazard. Derek Blackshare said isolation is the best way. DEQ has prohibition on burying radioactive materials.

Fred Dorrell asked to clarify that this discussion pertains to Tract 2A. Mr. Blackshare said correct.

Michael Skates said originally when this was found there was a fence around it. Councilor Parks inquired about fencing at the Council meeting for the Comp plan change. Mr. Skates asked Mr. Blackshare to discuss the fencing and plans.

Derek Blackshare said, currently, a barbwire fence surrounds Tract 2A which extends a little farther from that tract to keep access limited. A more robust, 6-foot-high fence is proposed for this site to keep people out.

Derek Blackshare asked if any member of DEQ present would like to add anything.

Rita Kottke, Oklahoma Department of Environmental Quality (ODEQ), Site Remediation, 707 N. Robinson, Oklahoma City, OK 73102 said DEQ has not completely determined that they are ok with just providing a fence and leaving it long term. There are several things to do when dealing with radiation, such as disposing of it; however, there must be a site to take it to and the Nuclear Regulatory Commission (NRC) must be involved in that. DEQ is looking at ways to get the area cleaned up. She said disposing of radioactive material is very difficult as there are only a few places in the United States that will take the material and depending on the level, determines where it can go. In addition, those states and the NRC have required licensures. She said the radioactive material will not be at this site forever; however, it takes a very long time to get a site cleaned up.

Lee Whelpley asked if they know the cause. Ms. Kottke said it is hard to say because it is covered; however, DEQ has sampled it. She said the material was probably a dump truck load that was emptied.

Ricky Jones asked what the two materials found were. Rita Kottke said thorine and uranium. She said it is in a mass of other things, but those are the radioactive materials.

Ricky Jones asked if the type of radioactive material could be isolated enough to determine where it came from. Rita Kottke said, with radioactivity, isotopes can be compared to nearby facilities that may have similar wastes; however, they have not been able to pinpoint where it came from. She said DEQ has not done a, "finger print" yet to determine where it came from as it is an expensive process. She said this may be something they will look into later. Ultimately, the best solution would be to find who put the material there and make them clean it up. DEQ has been looking into it, but it is a long process.

Derek Blackshare the next area he has been requested to speak about is Tract 2- the landfill portion of this property and what is proposed for it. He said they are fairly far along for it in the Brownsfield proposal. The Brownsfield process results in a No Action Certificate, with restrictions. Tract 1 & 3 include no residential development and no water wells. Tract 2 will have the same restrictions in addition to two more. One being a Soil and Waste Management Plan. With this plan, if any soil activities dig into the refuse (buried at various depths from two feet to four and five feet) then this soil and management plan prescribes what must be done to address it safely, mainly for utilities or structure development. The second part is a Vapor Mitigation Plan to abate any methane that could be generated from landfill operations or degradations of the materials, that create methane, so they do not cause explosive atmospheres under buildings, structures, inside buildings, etc. This plan is essentially vapor venting. He said the proposal for Tract 2 has been submitted to DEQ and is under review. Once the review is complete, it is anticipated to have the four restrictions as just described, to cover the development regardless of what the development is.

Fred Dorrell opened the public hearing and asked if anyone wished to speak on this item. No one responded. Mr. Dorrell closed the public hearing.

Mark Jones said he has some reservations about the 6-foot high fence. He said any kid can climb over this type of fence. He said it should be addressed in such a manner as to not condemn the entire project, but it needs evaluated with extreme care and planned accordingly. This area has some red, in which extended exposure can harm someone. He said it is also important that they find out who dumped the radioactive material on this site, which is going to be very expensive but the plans for this site are planned for long term.

Lee Whelpley said the fact that this property contains uranium and methane, is concerning. He said he agrees with Mark Jones that the planning of the fence needs to be looked at in more detail.

Mark Jones said the applicant(s) are raising their own red flags, which is prudent, but the Commission has a responsibility to pay attention to this property and not just approve because it is a vacant piece of property. The land was used when it was thought that nothing would ever be there but that landfill. He said he has seen several developments built on landfills that have been

successful, such as golf courses, but this site has uranium. He said he would hate to find out that a kid was on this site and in twenty years develops cancer from it.

Fred Dorrell said he is concerned that a barb wire fence is all that exists today. He said the effort being taken to contain this area is greater than what was. He said he agrees with the previously mentioned concerns.

Mark Jones asked if the Commission can suggest 12 foot or 18-foot-tall fence to limit access. Lee Whelpley said although a taller fence would be intended to keep people out, it entices others to see what is behind it and it not necessarily a deterrent. Mr. Whelpley said he is concerned that currently the site has a barb wire fence only. Mark Jones said the barb wire fence would be replaced with the proposed wood fence as a stop gap until DEQ finds out who dumped the radioactive material or can clean up the area, in the future.

Ricky Jones said he believes industrial zoning is appropriate for this area. If there are flood concerns, we put our faith in the City's storm sewer review process and requirements, DEQ or other applicable authorities to plan accordingly. If there is a radioactive concern, as in this case, we have to trust that the regulatory authorities (state, federal, local or otherwise) that they will require the appropriate steps to be done. He said there will be more approvals as this process moves forward.

Tim Terral, TEP, said DEQ must approved any development, on this site, before anything can go in; therefore, there are a lot of protections built in already. He said they are as concerned as the Planning Commission members and others are. They do not want to hurt anyone. Tract 2A is a concern and looking at the picture with red marks looks bad; however, the levels are equivalent to getting a dental x-ray.

Ricky Jones referenced the chart that shows instant, hour, day, and year. He said the red looks pretty scary.

Derek Blackshare said scales are not same as the map. He said they are two independent drawings. One, represents the total exposure level. He said the bottom of the color map shows the units that were discovered during the survey. The green shown on the map is from 0 to 15 micro roentgens per hour. The blue area shown is 15 to 25 micro roentgens per hour. The yellow goes up to 100 micro roentgens per hour and the magenta goes up to 200 and the top level is 575 micro roentgens per hour. If those numbers are compared with the dose levels - the dose levels are measured in Sieverts per hour, which would go to micro Sieverts. He said the top level of 575 reads at the 5.0 level on the other chart, after an hour of radioactive exposure

Discussion continued.

Lee Whelpley said he would feel more comfortable if the fence were made of cinder blocks. Tim Terral said a cinderblock fence would be more expensive for the developer; however, sees no difference on keeping people out. People can climb a wood fence just as easily as a cinderblock fence. Maintenance of the fence is critical and will have to be maintained by and HOA or other-

it will have to be addressed at the platting phase.

Fred Dorrell asked how they would maintain the growth inside the fence. Tim Terral said he assumes it would be done via a brush hog. Mr. Dorrell said he was concerned if that would be disrupting the material.

Derek Blackshare said DEQ is looking at what can be done inside the fence.

Lee Whelpley said this area is as bad as it is going to get. The problem was worse but it has gone down and continues to.

Michael Skates said he and Larry Curtis met with the residents of Timberbrook subdivision, to the north, last weekend and prior to that he, the Assistant City Manager of Operations, and City Engineer met with the residents to discuss concerns. He said they discussed a variety of issues, including this site. Staff met with the representatives present at this meeting today and discussed many of the issues discussed today, and as a result had Derek Blackshare available to talk today about the radioactive area, landfill, and how to administer utilities and roadway construction and the activities that can take place on or near the landfill portion. One resident is here today. They residents were presented with the drawings shown to the Commission. They were told there was no known leakage coming from the sight. Some of their concerns were looked at by Derek and his team, in the past, and appear to be coming from the previous strip pits and strip mining and not from this location with radioactive material. The City is trying to help the surrounding residents', as well as applicants with information received from the experts to move forward with the project. The City is not a regulatory agency in regards to radioactive material and are leaning heavily on this development team (the Developer, DEQ, TEP, and the Blackshare group) to ensure items are complied with. It is unknown what will be developed on this site yet. Detention will be required; however, it is unknown what size of detention. The City's goal is to make sure nothing leaves this site, in terms of refuse and radioactivity and isolate.

Michael Skates said they are looking at doing a fence with barbed wire on the top portion along with signage. Today is an open farm fence. This tract is also being looked at to determine if platting is needed. For normal type situations, platting would be done with right of way and sidewalk requirements. The City is working with DEQ and TEP to determine what the City's best interest is for Tract 2A that abuts Kenosha Street. No final decision has been made yet for that particular tract.

Conversation continued.

Lee Whelpley asked if this site will be monitored regularly, now that it is known to contain radioactive material. Mr. Whelpley asked if it is required to be monitored every year, to determine if levels go up or down. Michael Skates said the City does not require it. Derek Blackshare said there are no specific plans at the moment for further monitoring of the materi

Rita Kottke said at this point DEQ has not decided exactly what will happen. She said they are consulting with the Nuclear Regulatory Commission. The radioactive levels will not go up.

Radioactive material does not increase, it degrades and has half-lives into other chemicals. She said at this point, there has been no determination on Tract 2 or 2A. If there is a concern regarding monitoring, DEQ will look into it. DEQ believes if access can be controlled and keeps people from standing on the material than it is not a danger to anyone, at the level it is at right now. She said DEQ can consider monitoring the location until the material is cleaned up, as part of their Brownsfield Certificate.

Michael Skates if DEQ has issued a Consent Order. Rita Kottke said there is a Consent Order for this entire site that is still active because they have not satisfied the Consent Order. DEQ is still making determinations.

MOTION by Ricky Jones to approve and PUD-259 and BAZ-1975, Item 6A, per Staff recommendations and subject to any state, local, or federal regulations that may apply to be adhered to as well. The motion was seconded by Mark Jones.

After the vote, Fred Dorrell said this item will be heard by City Council on April 4, 2017, at 6:30 p.m.

Aye: 4 - Mark Jones, Lee Whelpley, Fred Dorrell, and Ricky Jones

Absent: 1 - Carolyn Isbell-Carr

7. Appeals

None

8. General Commission Business

None

9. Remarks, Inquiries and Comments by Planning Commission and Staff (No Action)

Larry Curtis said Staff has been in communication with Administration and the City Attorney's Office regarding updating the Zoning Code, Cell Phones Section 5.9. The City Attorney has requested that we look into updating the code regarding cell phone towers because cell phone technology is constantly

evolving and upgrading and our Ordinance needs to be changed to be in compliance with these changes. The City Council is looking at outside attorneys to assist Staff on updating this and have contracted with a company and are drafting a copy to provide to Staff for the update. The next Planning Commission meeting should have this item on the agenda for review to change this Ordinance.

Ricky Jones asked who the firm being hired is.

Michael Skates said they are looking at the Next Generation of Technology, 5G, a firm out of Minnesota.

10. Adjournment

MOTION by Mark Jones to adjourn at 5:43 p.m. The motion was seconded by Lee Whelpley.

Aye: 4 - Mark Jones, Lee Whelpley, Fred Dorrell, and Ricky Jones

Absent: 1 - Carolyn Isbell-Carr